

Secretary's Order No.: **2008-F-0045**

RE: Proposed Amendments to the State of Delaware
Regulation No. 3908: General Rules and Regulations Governing Land
and Waters Administered by the Division (2008)

Date of Issuance: September 11, 2008

Effective Date of the Amendment: October 11, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3908: General Rules and Regulations Governing Land and Waters Administered by the Division (2008). These revisions will improve hunting safety and quality on State of Delaware wildlife hunting areas where geocaching and letterboxing activities are permitting. In addition, the revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of 3908, and will be enforced as such by the Department with fines assessed accordingly.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

After the hearing, the Department performed an evaluation of the evidence entered into the record in this matter. Thereafter, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated September 10, 2008, and that Report is expressly incorporated herein by reference.

II. Findings:

The Department has carefully considered all relevant public input regarding its proposed regulation, and has provided a reasoned analysis and a sound conclusion with regard to the same, as reflected in the Hearing Officer's Memorandum of September 10, 2008, which is attached and expressly incorporated into this Order. Moreover, the following findings and conclusions are entered at this time:

1. Proper notice of the hearing was provided as required by law.
2. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
3. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
4. The Department held a public hearing in a manner required by the law and regulations;
5. The Department considered all timely and relevant public comments in making its determination;

6. Promulgation of these proposed amendments would improve hunting safety and quality on state wildlife areas where hunting, geocaching and letterbox activities are permitted;
7. The revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of Regulation 3908, and will be enforced as such by the Department with fines assessed accordingly;
8. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in geocaching or letterbox activities;
9. The Department's proposed amendments to Regulation 3908 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that
10. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated September 10, 2008, and expressly incorporated herein, it is hereby ordered that the proposed amendments to State of Delaware Regulation No. 3908 be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the Division of Fish and Wildlife Regulation No. 3908, will aide the Department in its ability to improve hunting safety and quality on state wildlife hunting areas where hunting, geocaching and letterbox activities are permitted, while simultaneously protecting the natural resource itself.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes

John A. Hughes
Secretary

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MEMORANDUM

TO: John A. Hughes, Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to State of Delaware
Wildlife Regulation No. 3908: General Rules and Regulations
Governing Land and Waters Administered by the Division
(2008)

DATE: September 10, 2008

I. Background:

A public hearing was held on Monday, August 25, 2008, at 6:30 p.m. at the DNREC Richardson & Robbins Building Auditorium to receive comment on proposed amendments to the existing Delaware Wildlife Regulation No. 3908: General Rules and Regulations Governing Land and Waters Administered by the Division (2008). These revisions will improve hunting safety and quality on State of Delaware wildlife hunting areas where geocaching and letterboxing activities are permitting. In addition, the revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of Regulation 3908, and will be enforced as such by the Department with fines assessed accordingly.

Two members of the public attended this hearing on August 25, 2008, however, no public comment or questions were received by the Department at that time regarding this proposed action. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on August 25, 2008, Kenneth Reynolds, Program Manager with the Department's Division of Fish and Wildlife, offered the Department's exhibits pertaining to this regulatory promulgation, along with a brief explanation to the public with regard to the salient points of the proposed amendments to these regulations.

Mr. Reynolds explained to the attendees at this public hearing that the first change to this Regulation is at Section 8.2.1, where the Department is inserting a statement indicating that persons shall adhere to special entry restrictions as listed on official area maps signed by the Division Director. Violators would be fined for trespassing when going into a particular area that the Department has restricted.

Secondly, Mr. Reynolds explained that last year the Department developed a new regulation which allowed geocaching. Over the past year, there was some conflict between geocachers and hunters, primarily, deer hunters. Unlike State parks, the purpose and mission of State wildlife areas is to provide not only habitat for wildlife, but also to provide wildlife-related recreation. Hunting is one of those recreational activities, as is bird watching and wildlife photography. Thus, geocaching, while being accommodated, will have some restrictions as to when it can occur. This revision will state that *the placement of or searching for geocaches and letterboxes may only occur on Sundays from sunrise to sunset September 1 through February 15 of each year, and during the spring turkey hunting season.* For the remainder of the year, such activities may occur seven days a week, from sunrise to sunset.

For brevity's sake, and for the Secretary's review, a copy of the Department's proposed revisions to these regulations is attached hereto as Attachment "A" and is expressly hereby incorporated into this report.

It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in geocaching or letterbox activities.

III. Conclusions and Recommendations:

Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for these proposed changes to Delaware's General Rules and Regulations Governing Land and Waters Administered by the Division (Regulation 3908), and has thoroughly addressed all public questions during the various phases of the record developed in this matter. Accordingly, I recommend promulgation of these proposed amendments in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;

2. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department considered all timely and relevant public comments in making its determination;
5. Promulgation of these proposed amendments would improve hunting safety and quality on state wildlife areas where hunting, geocaching and letterbox activities are permitted;
6. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally that participate in geocaching or letterbox activities;
7. The revisions will specifically clarify that trespass into areas on State Wildlife Lands that are closed by the Director, and indicated as such on official area maps, is a violation of Regulation 3908, and will be enforced as such by the Department with fines assessed accordingly;
8. The Department's proposed amendments to Regulation 3908 are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations.

Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and that

9. The Department shall submit the proposed regulation as a final regulation to the Delaware Register of Regulation for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

/s/ Lisa A. Vest .
LISA A. VEST
Hearing Officer